

### **REMARKS**

This is responsive to the November 16, 2007 non-final Office Action.

#### **Claim Rejections – 35 U.S.C. §102**

On page 3, item 3 of the November 16, 2007 non-final Office Action, claims 1-3, 5-11, 14-16, 18-22, 24-25, and 28-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Moore et al. (U.S. Patent Publication No. 2004/0132432).

Moore et al. disclosed a system for recording voice conversations over telephones. Tags could be placed by a user of the telephone at designated portions of the voice recording to assist in playback. In FIG. 1 of Moore et al. a communication device 1 such as a cellular phone communicated over a PSTN 7 to store the recording in a TimeSlice computer 14. According to paragraph [0062] “users are able to send instructions to the computer 14 to control what is recorded. This includes the real-time insertion of computer readable tags into a current voice recording.” According to paragraph [0055] the TimeSlice computer 14 received DTMF audio signals from the communication device 1 and interpreted them as tags and instructions for recording. DTMF audio signals were sent in the same band as the voice conversations.

Applicant claims a messaging unit to determine “when the user of the cellular telephone device desires to record a cellular telephone conversation, to transmit a record enable signal via the radio unit using the *out-of-band* communication” as recited independent claim 1 and corresponding independent equipment claim 8 and method claim 22 . The Office Action relies on the voice communications for the claimed in-band communication and the “signaling used to transmit the recording instructions to the central computer” as the out-of-band communication. To transmit the recording instructions, however, Moore et al. used the DTMF audio signals sent in the same band as the voice conversations. DTMF audio signals are the antithesis of out-of-band signaling. Therefore Moore et al. do not anticipate the recited “record enable signal via the radio unit using the *out-of-band* communication” in independent claim 1 and corresponding

independent equipment claim 8 and method claim 22. Nowhere did Moores et al. disclose or suggest an alternative construction for these DTMF audio signals.

As for dependent claims 2 and 25, the Office Action asserts that Moores et al. teach the out-of-band communication is a signaling channel in paragraphs [0050] and [0062]. However, this paragraph specifically points out that a PSTN was used for access of the cellular telephone 1 by the TimeSlice computer 14. A conventional PSTN was incapable of sending special signaling other than DTMF audio tones together with a voice signal and therefore an internet protocol was not disclosed.

As for dependent claims 2 and 25, the Office Action asserts that Moores et al. teach the out-of-band communication is a signaling channel in paragraphs [0050] and [0062], and as for dependent claims 5, 14 and 28, the Office Action asserts that Moores et al. teach the out-of-band communication is sent using an internet protocol in paragraph [0090]. However, this paragraph specifically points out that a PSTN was used for access of the cellular telephone 1 by the TimeSlice computer 14. A conventional PSTN was incapable of sending special signaling other than DTMF audio tones together with a voice signal and therefore an internet protocol out-of-band or signaling channel was not disclosed.

As for dependent claims 6, 15 and 29, the Office Action asserts that Moores et al. teach the out-of-band communication is a cellular data channel (Figure 1, this is a cellular network thus there will be cellular data channels). Because Moores et al. teach use of DTMF audio signaling, such would not have been sent on an out-of-band cellular data channel.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-3, 5-11, 14-16, 18-22, 24-25, and 28-32 under 35 U.S.C. 102(e) over Moores et al. is respectfully requested.

**Claim Rejections – 35 U.S.C. §103**

On page 9, item 5 of the November 16, 2007 non-final Office Action, claims 4, 12 and 26 were rejected under 35 U.S.C. §103(a) as obvious over Moore et al. (U.S. Patent Publication No. 2004/0132432) in view of Aschir (U.S. Patent Publication No. 2003/0186682).

The Office Action asserts that it would have been obvious to send the command in Moore et al. using the SMS message of lines 1 - 6 in paragraph [0024] of Aschir. Applicant contends only hindsight would one to replace the DTMF signaling with the SMS message of Aschir. Aschir did not use these SMS messages for control. Neither Aschir nor Moore et al. suggest use of SMS to control nonetheless deliver a record enable signal from a mobile to a network recorder as recited in claims 4, 12 and 26.

The present invention takes advantage of the out-of-band path on a signaling channel in a cellular radio communication to send the claimed record enable signal and thereby save the time and resources needed to setup a separate and parallel data channel to send this simple mere yes or no recording message. Out-of-band signaling of the record control signal is not a mere design choice among available alternatives. To conclude otherwise denies the non-obvious contribution and resultant advantages discovered by the inventor of the instant patent claims.

The present invention, recited in certain dependent claims, implements out-of-band record enable signal in two exemplary ways, either as short message data or an internet protocol. SMS messages and internet protocol communications can be sent out-of-band, and parallel to a traffic channel carrying, say voice. It is, however, the application of this secondary out-of-band channel from a mobile to a network recorder for a record enable signal that eliminates the need to setup a data channel to send this simple mere yes or no recording message. The art of record, including the applied Moore et al. and Aschir references, do not disclose or suggest the claimed use of out-of-band communications to send a record enable signal from a mobile to a network recorder.

Accordingly, reconsideration and withdrawal of the rejection of claims 4, 12 and 26 under 35 U.S.C. §103(a) over Moore et al. in view of Aschir is respectfully requested.

On page 10, item 6 of the November 16, 2007 non-final Office Action, claims 17 and 23 were rejected under 35 U.S.C. §103(a) as obvious over by Moore et al. (U.S. Patent Publication No. 2004/0132432) in view of Osann (U.S. Patent Publication No. 2004/0203608).

The Office Action asserts that it would have been obvious to send the voice signal to the voice recorder in Moore et al. using a streaming protocol of lines 1-8 of paragraph [0024] of Osann. Osann disclosed wireless video and voice streams recordable on a server. Assuming Osann had a recording command, which it did not disclose, Osann still did not disclose where or how any command recording was communicated.

Accordingly, reconsideration and withdrawal of the rejection of claims 7 and 23 under 35 U.S.C. §103(a) over Moore et al. in view of Osann is respectfully requested.

On page 11, item 7 of the November 16, 2007 non-final Office Action, claims 13 and 27 were rejected under 35 U.S.C. §103(a) as obvious over Moore et al. (U.S. Patent Publication No. 2004/0132432) in view of Aschir (U.S. Patent Publication No. 2003/0186682), as applied to Claims 12, 26 above, and further in view of Olsson et al. (U.S. Patent No. 5,915,222).

Olsson et al. showed an example of a SS7 signaling. Aschir showed an example of a mobile that used SMS messages. However, none of Olsson et al., Aschir or Moore et al. suggested use of SMS with SS7 signaling to deliver a record enable signal from a mobile to a network recorder as recited in claims 13 and 27.

Accordingly, reconsideration and withdrawal of the rejection of claims 13 and 27 under 35 U.S.C. §103(a) over Moore et al. in view of Aschir and further in view of Olsson et al. is respectfully requested.

**Conclusion**

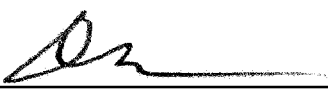
All the issues in the Office Action dated November 16, 2007 have been addressed. Favorable consideration of the present application is requested.

If any issues remain, the Examiner is much encouraged to phone the undersigned.

Respectfully submitted,

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